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No. 82-1925

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES DEPARTMENT OF STATE AND
GEORGE P. SHULTZ, SECRETARY OF STATE, PETITIONERS

v.

WASHINGTON POST COMPANY

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE PETITIONERS SUGGESTING MOOTNESS

REX E. LEE
Solicitor General
Department of Justice
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The Solicitor General, on behalf of the petitioners, the Department of State and the Secretary of State, suggests that this case has been rendered moot by virtue of respondent's withdrawal of its request for the documents involved.

The issue in this case is whether the Department of State properly withheld from disclosure under the Freedom of Information Act documents pertaining to the expenditure of funds from a special annual appropriation for unforeseen expenditures arising in the diplomatic and consular service. The court of appeals held that the documents are not exempt from disclosure under Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3), and that the documents could not be withheld on the ground that the special statutory scheme by which Congress has regulated public disclosure in the specific area of government receipts and expenditures in any

event takes precedence over the FOIA (Pet. App. 1a-15a). On October 3, 1983, the Court granted the petition for a writ of certiorari to review the judgment of the court of appeals.

By letter dated October 24, 1983, respondent, through counsel, has now withdrawn its request for the records in question and represents that neither respondent nor its reporter, Ronald Kessler, has any present intention to request such records in the future.[1] We suggest that the withdrawal of respondent's FOIA request renders this case moot. We therefore respectfully submit that the judgment of the court of appeals should be vacated and that the case should be remanded to the court of appeals with directions that it instruct the district court to dismiss the case as moot. See, *e.g., Central Intelligence Agency* v. *Holy Spirit Association for the Unification of World Christianity*, 455 U.S. 997 (1982); *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-41 (1950). Counsel for respondent has authorized us to represent that respondent joins in the suggestion of mootness and of the disposition proposed above.

REX E. LEE
Solicitor General

OCTOBER 1983

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[1]A copy of the letter from counsel for respondent to Willard A. De Pree, Acting Undersecretary of State for Management, is reproduced as an appendix to this memorandum.

APPENDIX

LAW OFFICES

WILLIAMS & CONNOLLY

HILL BUILDING
839 SEVENTEENTH STREET, N. W.
WASHINGTON, D.C. 20006

AREA CODE 202
331-5000

October 24, 1983

Mr. Willard A. De Pree
Acting Undersecretary of State
for Management
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Re: *Freedom of Information Act Request*

Dear Mr. De Pree:

This firm represents Ronald Kessler and the Washington Post in connection with Mr. Kessler's Freedom of Information Act request of October 5, 1979 for "ledger sheets and schedules of disbursements and receipts of the Secretary of State's Emergency Fund." The request was specifically limited to data for the previous three years.

Four years have passed since the State Department denied Mr. Kessler's request on October 29, 1979. Although the State Department has never released the requested information, the Post has obtained sufficient information from other sources in the past two years to publish two stories on the Emergency Fund. As you are aware, the matter is the subject of continuing litigation in the federal courts.

The Post does not wish to pursue further its FOIA request for records pertaining to the Secretary of State's Emergency Fund. Accordingly, on behalf of the Post and Mr. Kessler, I hereby withdraw the request for those records, and represent that neither the Post nor Mr. Kessler has any present intention to request such records in the future.

Very truly yours,

/s/ KEVIN T. BAINE

Kevin T. Baine

KTB/vlc

cc: Kenneth S. Geller, Esquire

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